



Guideline

Income Tax Income Taxation of Native Americans

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Introduction

This guideline explains the criteria used to determine if a Native American is subject to North Dakota individual income tax. The criteria are based on federal law and U.S. Supreme Court decisions that limit states' authority to tax the income of a Native American. Except as provided under **Nonresident Of North Dakota** on page 2, the information in this guideline assumes the Native American is a resident of North Dakota.

Exemption criteria

A Native American is exempt from North Dakota income tax if the following criteria apply:

1. The person is enrolled as a member of an Indian tribe (*see **Enrollment** below*),
2. The person lives on the Indian reservation where enrolled (*see **Indian reservation** below*), and
3. The person's income is derived from sources on the Indian reservation where enrolled.

If any of these criteria are not met, an American Indian may be subject to North Dakota income tax.

Enrollment

Enrollment as a member of a federally-recognized Indian tribe is a prerequisite to exemption from North Dakota income tax. If a person is not enrolled as a member of a federally-recognized Indian tribe, the exemption that is discussed in this guideline is inapplicable. Enrollment is determined by the constitution, by-laws, rules or regulations of the tribal government, or by federal law. An affirmative act of enrollment with a tribe, as evidenced by records maintained by either the tribal government or the U.S. Bureau of Indian Affairs, is generally required.

Indian reservation

In this guideline, "Indian reservation" or "reservation" means not only a formal Indian reservation, but also any other lands included in the definition of Indian country under federal law. Therefore, these terms mean any land set aside by the federal government for the residence of Native Americans, including formal Indian reservations, allotments to individual Native Americans, and dependent Indian communities within the United States.

Living on reservation where enrolled

If a Native American lives on the Indian reservation where enrolled for the entire year, income from the following sources is *exempt* from North Dakota income tax:

- Wages and other compensation for work performed on the reservation where enrolled
- Income from a business operated entirely within the reservation where enrolled, whether a sole proprietorship, partnership, limited liability company or Subchapter S corporation
- Rents, gains, and other income from tangible property located on the reservation where enrolled

- Income from gambling activity conducted on the reservation where enrolled
- Interest, dividends, gains and other income from intangible property, such as stocks and bonds
- Income from a pension or annuity account
- Income from sources outside North Dakota

Service in U.S. Armed Forces. If a Native American's legal residence is on the Indian reservation where enrolled, compensation received for active duty service in the U.S. Armed Forces is exempt from North Dakota income tax, regardless of whether the service is performed within or without North Dakota. This includes service in the U.S. Army, Navy, Air Force, Marine Corps, Coast Guard, and service as an officer in the U.S. Public Health Service if detailed by proper authority for duty with the U.S. Army or Navy.

If a Native American lives on the Indian reservation where enrolled for the entire year, income from the following sources is **taxable** by North Dakota:

- Wages and other compensation for work performed within North Dakota but outside the reservation where enrolled
- Income from a business operated within North Dakota but outside the reservation where enrolled, whether a sole proprietorship, partnership, limited liability company or Subchapter S corporation
- Rents, gains, and other income from tangible property that is located within North Dakota but outside the reservation where enrolled
- Income from gambling activity conducted within North Dakota but outside the reservation where enrolled

Living off reservation where enrolled

If a Native American lives off of the Indian reservation where enrolled for the entire year, the person's entire income is subject to North Dakota income tax. This applies even if part or all of the income is derived from sources on the reservation where enrolled or sources outside North Dakota. Where a Native American lives off of the Indian reservation where enrolled for part of the year, the person is subject to North Dakota income tax on the following:

- Income from any source during the part of the year the person lived off of the reservation where enrolled
- Income from sources in North Dakota but outside the reservation where enrolled during the part of the year the person lived on the reservation where enrolled

Nonresident of North Dakota

If a Native American is enrolled as a member of a federally-recognized Indian tribe **located outside North Dakota** and is a nonresident of North Dakota, income derived from North Dakota sources is subject to North Dakota income tax. Income from North Dakota sources includes (1) wages and other compensation for services performed in North Dakota, (2) income from tangible property located in North Dakota, (3) income from a business conducted in North Dakota, and (4) income from gambling activity conducted in North Dakota.

Income from North Dakota sources **does not** include (1) compensation for active duty service in the U.S. Armed Forces, (2) compensation eligible for exemption under the reciprocity agreement with Minnesota or Montana, or (3) compensation for services performed in North Dakota by a person who performs regularly assigned duties in more than one state for a railroad or other interstate motor carrier.

If a Native American is an enrolled member of a federally-recognized Indian tribe **located in North Dakota**, but is not a legal resident of North Dakota for the entire year, income from North Dakota sources is not subject to North Dakota income tax if the income-producing activity or property is located on the reservation where enrolled.

North Dakota income tax return

A Native American must file a North Dakota individual income tax return if the person has income that is subject to North Dakota income tax and is required to file a U.S. individual income tax return. A booklet containing North Dakota individual income tax forms and instructions may be obtained from the North Dakota Office of State Tax Commissioner.

Need help?

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